

1
2
3
4
5
6
7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
10

11 SHAWN HAWK,

No. CIV S-04-0731-MCE-CMK-P

12 Plaintiff,

13 vs.

FINDINGS AND RECOMMENDATIONS

14 COOK, et al.,

15 Defendants.
16 _____/

17 Plaintiff, a state prisoner proceeding pro se, brings this civil rights action pursuant
18 to 42 U.S.C. § 1983. Pending before the court is plaintiff's fourth amended complaint (Doc. 61).
19 The court is required to screen complaints brought by prisoners seeking relief against a
20 governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a).

21 The factual allegations set forth in the fourth amended complaint are outlined in
22 the court's order issued herewith. By these findings and recommendations the court determines
23 that plaintiff has failed to state a claim based on denial of equal protection and now recommends
24 that such claim be dismissed. Specifically, plaintiff continues to allege the conduct of defendants
25 violated his rights to equal protection "in that female prisoners were permitted to grow their hair
26 to any length while male prisoners were limited, without cause and under threat of punishment,

1 to hair no longer than three (3) inches.” This allegation is insufficient to state an equal protection
2 claim because plaintiff does not allege discrimination based on race or religion. See Wolff v.
3 McDonnell, 418 U.S. 539, 556 (1974) (holding that prisoners are protected from invidious
4 discrimination based on race); Freeman v. Arpaio, 125 F.3d 732, 737 (9th Cir. 1997) (holding
5 that prisoners are protected from intentional discrimination on the basis of their religion).
6 Plaintiff has had ample opportunity to amend this claim and further leave to amend should not be
7 granted.

8 Based on the foregoing, the undersigned recommends that:

- 9 1. Plaintiff’s equal protection claim be dismissed; and
- 10 2. This action shall proceed on the fourth amended complaint as to plaintiff’s
11 due process and Eighth Amendment claims only.

12 These findings and recommendations are submitted to the United States District
13 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 20 days
14 after being served with these findings and recommendations, any party may file written
15 objections with the court. The document should be captioned “Objections to Magistrate Judge’s
16 Findings and Recommendations.” Failure to file objections within the specified time may waive
17 the right to appeal. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

18
19 DATED: January 11, 2008

20 
21 **CRAIG M. KELLISON**
22 UNITED STATES MAGISTRATE JUDGE
23
24
25
26